

### **REMARKS/ARGUMENTS**

With regard to the rejection of Claims 1-7 under 35 U.S.C. 101, base Claim 1 has been amended to call for an automated method of providing a gemstone assessment and also includes the step of computing a rating value of the gemstone based upon the aesthetic parameter values. With these and other amendments to Claim 1, it is submitted that the claims define a useful automated process that may be implemented, for example, in the form of a computer program or by other automated means. It is therefore submitted that Claims 1-7 define statutory subject matter under 35 U.S.C. 101.

Claims 1-20 stand rejected under 35 U.S.C. 102 as anticipated by Malnekoff '853. For the reasons set forth hereinafter, it is submitted that neither Claims 1-20 nor new Claims 21-37 are anticipated by this reference.

The present invention as defined by the claims, for example, amended Claim 1, takes objective data such as gemstone dimensions and/or proportions, for example, as inputs and processes these objective data to produce a subjective or aesthetic rating as an output. In preferred embodiments, the aesthetic rating is based on extensive characterization of diamonds in view of established consumer preferences and desirable characteristics and the invention seeks to replace the purely objective assessment of gem quality that is based primarily on a comparison of diamond proportions in accordance with the well known Tolkowsky "ideal cut" proportions with a more practical assessment of quality, though not necessarily economic value, based upon the aesthetic appearance of a gemstone. The preferred embodiments utilize a series of correlative data sets as shown in Figs. 2-6 wherein objective data such as pavilion angle and crown angle (objective parameter values) are used as the basis from which aesthetic parameter values are derived and a rating value is computed based on the aesthetic parameter values.

In contrast, Malnekoff describes a system and method for evaluating a gemstone as primarily directed to generating a price estimate, and which does not derive any subjective and/or aesthetic ratings based upon purely objective input data. The input to the system and method taught by Malnekoff, as disclosed at column 4, lines 27-30, includes cut type, weight, color, clarity, cut proportions, fluorescence and the identity of the lab generating the gemstone data. Although some of this input data, such as cut type, weight and cut proportions may be purely objective, other input information includes to a varying degree subject evaluation by an expert appraiser within an evaluating laboratory. The system and

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method of Malnekoff therefore make no attempt to determine subjective or aesthetic ratings on the basis of purely objective input data, but rather require that all necessary data be input into the system in the first instance.

Independent Claim 8 has been amended in a similar fashion to clearly define the present invention and distinguish it over Malnekoff.

New dependent Claims 21-33 define further preferred features of the method and computer program of the present invention. The basis for new Claims 21-24 and 29-32 is found between paragraphs 36 and 48 of the published application, support for Claims 21 and 29 is found at paragraph 36, support for Claims 22 and 30 is found at paragraphs 39-41, support for Claims 23 and 31 is at paragraphs 39 and 44, support for Claims 25, 26 and 33 may be found in the text between paragraphs 37 and 38 and in paragraph 71, support for new Claims 27, 28, 35 and 36 may be found at paragraphs 15 and 111, support for Claim 34 is at paragraphs 69-72 and support for Claim 37 is at paragraphs 69 and paragraphs 111-113.

New Claims 34-37 relate to a system for providing a user with a gemstone assessment and define over Malnekoff for the same reasons as set forth in connection with Claims 1 and 8. Like Claims 1 and 8, Claim 34 defines statutory subject matter under 35 U.S.C. 101.

In summary, none of the claims presently in the application are anticipated by Malnekoff '853 and it is requested that the Examiner reconsider and withdraw the rejections of the claims and pass the application to issue.

For the Examiner's information, an on-line implementation of a preferred embodiment of the invention may be found at "<http://www.pricescope.com/cutadvisor.asp>". Furthermore, a search engine that uses an assessment provided by the embodiment of the invention as one of the search criteria is also available at "<http://www.pricescope.com/sift.asp>". The applicant has indicated that these two links attract over 1000 hits per day by trade and consumer users.

Attached hereto are screen shots of a stand alone embodiment of the invention implemented on a Windows-based PC.

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If further issues remain, it is requested the Examiner telephone the undersigned at  
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Respectfully submitted,

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JOHN F. HOFFMAN, REG. NO. 26,280

Name of Registered Representative

Signature

January 11, 2005

Date

### Holloway Cut Adviser

Table, %	56	Light Return
Crown	34.5	Fire
Pavilion	40.7	Scintillation
Culet, %	0	Spread
Girdle, % (min-max or average)	2	Total

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### Holloway Cut Adviser

Table, %	56	Light Return 0.00 - Excellent
Crown	34.5	Fire 0.19 - Excellent
Pavilion	40.7	Scintillation 0.22 - Excellent
Culet, %	0	Spread 0.33 - Excellent
Girdle, % (min-max or average)	2	Total 0.8 - Excellent (TTC)

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